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ABSTRACT

This handbook describes techniques of negotiation applicable to units representing teachers and supervisors or teachers only. There are 10 chapters dealing with various aspects of negotiation: (1) "The Local Association as the Teacher's Advocate"--notes regarding authority to negotiate with the board of education; (2) "The Negotiating Team"--suggestions on qualifications, size, role, responsibility, authority, selection, and attitudes required of the negotiator; (3) "Organizational Readiness"--discussion of membership, communication with members, dues, state and national liaisons, policies, operating guidelines, legal counsel; (4) "Supporting Activities"--notes on the committees and their tasks; (5) "Preparing the Proposal"--guidelines regarding its content and form; (6) "Prenegotiation Planning"--a preliminary checklist and notes on method of operation and negotiation practice; (7) "Backup Research"--list of necessary information and notes on the use of data; (8) "At the Negotiating Table"--do's and don't's regarding relationship between the teams, ground rules, presenting the proposal, the negotiation dialogue, winning agreement, sequence of negotiation, tentative agreements, caucus and adjournment; (9) "Impasse Resolution"--notes on the use of mediation and fact-finding or arbitration to resolve it; (10) "Ratification." Appendixes include the NEA resolution on negotiation, a list of appropriate articles for a comprehensive agreement (master contract), and a research bibliography. (JS)

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How To Negotiate

A HANDBOOK FOR LOCAL TEACHER ASSOCIATIONS

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FOREWORD

One of the measures of the effectiveness of a local association is the extent to which it can affect decision making in the school system. Negotiation is the most effective tool presently available for bringing about bilateral decision making.

Properly carried out, negotiation can result in significant improvements in employment conditions for teachers and in the instructional program of school districts. Because the impact of negotiation is so vital, it is important that the process be competently conducted. This publication will be most valuable to teachers who are relatively inexperienced at the negotiation table, but it should be helpful to all.

The word *teachers,* as referred to in this manual, can be used in both the specific and the general sense. The techniques of negotiation described are applicable to all kinds of negotiation units which may be formed within a school system—by either all-inclusive units, representing teachers and supervisors, or classroom-teacher-only units.

Learning and developing negotiation skills require and deserve your time and effort. A study of this publication will not, by itself, guarantee complete success in negotiation, but it will certainly help. Consultation with the experienced staff members of the state associations and the NEA should also be sought whenever it is possible.

Gary D. Watts
Assistant Executive Secretary for
Field Services
National Education Association

CHAPTER ONE

The Local Association As the Teacher's Advocate

The local professional association is the member's advocate. It promotes his interests. It defends him. It attempts to provide a teaching environment that will permit him to practice his profession effectively.

One of the basic functions of a local association in carrying out these responsibilities is to secure the right to negotiate with the board of education all matters which affect the terms and conditions of a teacher's professional services.

Negotiation is the vehicle that allows the teacher to participate in making decisions regarding conditions under which he will work. The association's ability to negotiate is related directly to the effectiveness of its total program.

The optimum expectation is that the negotiation process will be carried out by both parties in good faith and in an atmosphere of cooperation. Occasionally certain conflicts will arise. The challenge then is to preserve the good-faith effort and to resolve such disagreements with a minimum of antagonism.

THE AUTHORITY TO NEGOTIATE

Many states have enacted laws which provide for the recognition of teacher organizations and mandate boards of education to negotiate in good faith with the recognized organizations. In states without such laws, thousands of local associations are now negotiating with school boards under voluntary agreements.

In nearly every case, the board has the authority to extend recognition to a local association which submits evidence that it represents a majority of the teachers. Verified membership lists, signed petitions, or signed designation cards are usually sufficient evidence. An association, however, may have to participate in a representation election with a rival organization to win recognition.

Recognition as the exclusive representative for teachers should always be the local association's goal. In negotiation and, even more

important, in implementing an agreement, the association which is *not* the exclusive representative is severely handicapped. It has responsibility without commensurate authority to carry out that responsibility.

The *Guidelines* series, published by NEA, provides help to local associations which are endeavoring to secure formal recognition. Further, the NEA's Division of Field Services and the state associations are prepared to assist local associations achieve this recognition.

CHAPTER TWO

The Negotiating Team

A strong, representative negotiating team is, of course, fundamental. Without sacrificing quality, team members should represent the diverse interests of the teaching staff. This requires consideration of sex, age, grade level, subject field, race, ethnic minorities, and such special interest groups as coaches and teachers of forensics. It is very helpful if each teacher is able to identify strongly with one or more individuals on the team. Talent should be such that team members complement one another.

QUALIFICATIONS

The paramount consideration is that the negotiating team must command the respect of the teaching staff. Association members must be confident that these individuals possess the knowledge, intelligence, courage, and skill to negotiate the best possible agreement in their behalf. This generally requires individuals who have demonstrated the following qualities:

- Talent for getting along with other people
- Commitment to advancing the professional and economic security of teachers
- Willingness to take risks for a cause or a principle
- Dedication to a high level of professional competence
- Good command of language and ability to articulate ideas and arguments persuasively
- Ability to speak and act decisively and responsibly under great pressure
- Energetic dedication to responsibilities
- Loyalty and integrity which are beyond question
- Pertinent knowledge and compulsion to be well prepared.

SIZE

There is no magic about the number of members a negotiating team needs to be successful. Success is related more directly to quality than to quantity. Nevertheless, the size of the team can be important.

The team must be large enough to be representative. This does not mean that each subgroup must be represented, because this could prove unwieldy. Any given teacher will belong to a number of groups. Careful selection of a few people can provide the necessary broad base of representation.

The team must be large enough to provide for a balance between continuity and change. At least half of the negotiators should be held over from year to year. This contributes stability to the association's relationship with the school board. Stability must be balanced by provision for change. The team must reflect the changes in today's teaching population, and in teachers' values and goals. Healthy organizations provide for development of new talent and infusion of new thinking, and associations benefit from a widening circle of members who understand the negotiating process.

The team must be small enough to be efficient. There is always a need for strong intrateam discipline. Caucuses often must be brief as well as productive. There will be frequent demands for quick group decisions. Team members will have to construct proposals and accept or reject counterproposals. These problems are more difficult for large teams to handle than for smaller, more cohesive teams. Many negotiating units of five or six people have proved to be adequate and efficient.

THE ROLE, THE RESPONSIBILITY, AND THE AUTHORITY

Throughout the process of preparing to negotiate, the team will receive statements of policy, priorities, and objectives from various individuals and groups within the association. The president, the executive committee, the legislative body, individual teachers, and numerous committees will exchange ideas with the negotiators. All of these important communications will guide the team in making decisions. The team must be mindful that its product will receive critical evaluation by those who advanced ideas and suggestions.

Within these limits, the team must have authority to negotiate the best possible agreement for the people it represents. This means

authority to interpret demands to be placed before the board of education. It also means authority to present proposals, to receive counterproposals, to make compromises, and to accept or reject the positions of the board.

Negotiation is fundamentally a delicate relationship between members of the education profession and their employing boards. This relationship and, therefore, the outcome of negotiation is affected by both external and internal forces. This makes it imperative that the relationship be carefully supervised and controlled. This supervision and control must be entrusted to the negotiating team. The team must have the authority to consult with association leaders regarding every public activity or position of the association. It must have sole authority to disseminate information about negotiation.

Placing a great deal of authority in the hands of the team is necessary to make negotiation a workable process.

SELECTION

The best method of selecting a negotiating team is through nomination by the president with confirmation by a legislative body. If the latter rejects a nomination, the president must make another nomination.

Since the fate of the local association is related directly to its relative success in negotiation, the president should be acutely aware of his accountability when the delicate task of selecting a negotiating team is undertaken.

ATTITUDES OF THE NEGOTIATOR

As the local association proceeds with the task of representing teachers, the negotiator will be called upon to articulate and justify teacher aspirations. Frequently, he will find himself in difficult circumstances. There will be pressures which, if he is not alert, might cause him to forsake his advocate's responsibility. This he must not do.

It is not possible to forewarn a negotiator on how to respond to every question and how to react in every circumstance. However, it is possible to describe an attitude—an advocate's attitude—which should condition his every response and reaction. That attitude should reflect the following propositions:

1. *A personal point of view should be avoided.* Any viewpoint expressed by the negotiator must be the association's position.

He must not speak for himself; he represents a group. The negotiator must assist his group with making decisions. He must help formulate group objectives. However, once the group has formulated its goals, these must become the negotiator's goals.

2. *The association should be the only agency empowered to speak in behalf of teachers.* The negotiator should take the position that the right to represent teachers as a group of professionals is lodged solely with the local association and individuals authorized by them—that no other group or individual has this authority. He must know that, given the opportunity, others will be inclined to exhibit a paternalistic attitude toward teachers. This is no longer possible or acceptable. The negotiator must repudiate paternalism. He must firmly maintain that the local association has the exclusive right to speak for teachers on all issues affecting teachers as members of the profession.
3. *Teachers should have the right to share the authority for decision making which affects them.* The negotiator must insist that teachers, as professional practitioners and as employees of the board, share with the board responsibility for the determination of educational policy and for the definition of conditions of employment. Teachers and board members are committed to providing quality education for the children of the community. Each party has a unique contribution to make in achieving this goal. Negotiation provides a procedure through which each can make its voice heard. Negotiation substitutes the cooperative approach for the authoritarian method of decision making.
4. *Teachers' status is measured in terms of compensation and authority.* In today's society status is measured, to a large degree, in terms of money and authority. Although lip service is given to the importance of the teacher in the community and in education, low salaries and lack of respect for, and authority of, classroom teachers within the educational hierarchy itself belie the teacher's real importance. Therefore, the negotiator must be committed to the proposition that teachers are important and that remuneration and authority commensurate with their contributions to society are essential conditions of employment.
5. *Economic self-interest is a legitimate pursuit for teachers.* The negotiator cannot be defensive or apologetic in seeking to im-

prove the economic status of teachers. He must take the position that the principle of economic self-interest undergirds the free enterprise system and that it is a rightful concern of teachers as well as other segments of society; further, that teachers must not be exploited in order to satisfy the economic interests of certain power forces within the community.

6. *Teachers are competent.* The board of education has a responsibility to employ and maintain a corps of competent teachers. If it employs less than the best, then the fault rests with the board. Salaries, personnel policies, and instructional programs must be predicated on the assumption that teachers, once employed, are good teachers unless proven otherwise; that it is a reflection on the administration if incompetent teachers are the rule rather than the exception in the school system; that the procedure for handling the incompetent staff member, while an item for negotiation, is a noneconomic item and has no relationship to budget. Throughout negotiation, the negotiator must insist on sound policies which are to be applied evenhandedly to every professional practitioner.
7. *Every proposal made by the association must be worthy of consideration.* The negotiator must be the champion of teachers' aspirations. There may be times when the school board may view the requests of teachers as overly ambitious or expensive. Occasionally, the negotiator may find it necessary to acknowledge that such views are based on facts. However, this does not mean that such requests are without value and can be summarily rejected, but rather that each one must be explored carefully in terms of all relevant factors before a final decision is reached.

CHAPTER THREE

Organizational Readiness

Sound organization is a basic ingredient of success in negotiating. A strong, vigorous local professional association with an action program is a near necessity for achieving teachers' goals. Checking the adequacy of an organization and correcting its weaknesses in practices and programs are important preparations for negotiation.

MEMBERSHIP

Membership is a prime measure of teacher commitment to the association's negotiating program. A body of nonjoiners, or a nonsupportive minority organization, severely damages the chances of negotiating successfully.

Strong local associations recruit members vigorously. Their goal is to enroll every teacher in the local, state, and national education associations. With that accomplished, they have gained power through both numbers and unity. Such power guarantees that the teachers' representatives will be listened to with respect at the negotiation table.

COMMUNICATION WITH MEMBERS

The local association must maintain a highly developed two-way communications network which encourages a free flow of information between the association and its members and which provides both routine and emergency contacts. The network must be organized to disseminate information quickly as well as to receive responses and other data. This includes both verbal and written communications.

DUES

In order to negotiate for teachers, an organization must be well funded. Local leaders must forcefully impress upon their members the close relationship between adequate dues and success in negotiation.

In many outstanding local associations, the combination of dues for the local, state, and national associations equals or exceeds $100 per year. As more locals undertake negotiation, this figure will become the rule rather than the exception. Members must be prepared to expect it. Too many local associations suffer from the nickel-and-dime character of their operations.

STATE AND NATIONAL LIAISONS

In its drive to improve the professional and economic status and security of teachers, the local has the vigorous support of its state education association and the National Education Association. These organizations work constantly in seeking laws that guarantee the local association the right to negotiate, in protecting the right of teacher-leaders to participate in negotiation, in providing research and resource materials, in developing sample procedures and guidelines, in sponsoring workshops and conferences to inform and train local leaders as negotiators, in serving as clearinghouses for negotiated agreements, in maintaining a public relations program, and in offering legal counsel when needed.

In addition to this general support, specialists on organizational structure and operation and experts on salaries and negotiation are available to assist local associations in preparing for negotiation. This on-the-spot guidance is invaluable.

The local association that is preparing to negotiate should maintain regular contact with its state association and the National Education Association. Local leaders need to apprise themselves of the services of state and national organizations and should make maximum use of them. Aside from its own members, they are the association's most valuable resources.

POLICIES

The constitution, bylaws, and policies are the backbone of the local association. It is imperative that these be kept up-to-date. The constitution should identify negotiation with the school board as a primary purpose of the association. Resolutions, which set forth the policies of the association, should establish as a high priority the negotiation of a strong master contract or, where a contract is in effect, an improved master contract.

If the constitution and policies do not reflect these purposes and goals, appropriate constitutional reform and policy adoption should be a first objective for the association.

In making this change, the association will need to vest responsibility for the various aspects of negotiation with appropriate officers or agencies within the association. It should inform the membership about this, and explain how the association will execute and administer the negotiation function. Finally, the association's policies should recognize the right of the membership to ratify negotiated agreements. All members should fully understand these policies.

OPERATING GUIDELINES

Successful negotiation demands that the president, the executive committee, the negotiating team, and other leaders be sensitive leaders rather than seekers of power. A teacher's confidence in the association and his willingness to commit himself to it depend on his respect for its leaders.

The task of leaders is to assist the group in formulating its objectives and to help it in achieving them. They cannot truly lead if they shirk either of these responsibilities.

Leaders must be constantly alert that every policy and program advocated by the association reflect the desires and needs of its members. This requires that all reports, policies, and programs be approved by the members or by a delegate body which is close enough to the members to be representative.

Sound decision making requires adequate information. The local association must build and maintain adequate permanent files. To meet negotiation needs, these files must include salaries and personnel policies of the local school district; fiscal operations of the district, including adopted budgets and annual financial statements; an outline of the local political structure; a list of influential community organizations; several contracts negotiated by other associations; and detailed, verified information on school finance and social and economic trends in the community and the nation.

This list is not all-inclusive. All data that might be helpful in the decision-making process need to be identified, collected, cataloged, and filed.

The association must maintain a basic negotiation library. This needs to be kept current by means of a subscription to the *Negotiation Research Digest* compiled by the NEA Research Division, other recent research reports and salary and negotiation materials from NEA and the state education association, the regular addition of new state and national association training materials, and contemporary literature

(books, periodicals, government reports, and so forth) regarding trends in employment practices and economic and social conditions. These are invaluable resources in negotiation.

It always helps the association for it to be recognized as a powerful force in its community. Leaders should increase the visibility of the local association by participating in community groups and activities. Citizens are interested in what teachers are doing, and coalitions can easily be formed. The local association should maintain relations with the news media, service and civic organizations, the PTA, and other interested groups and citizens. Association representatives should attend meetings of the school board and, when appropriate, have something significant to say about the issues being considered.

LEGAL COUNSEL

The local association should retain a carefully selected attorney. From time to time, the association will need to know its legal rights and limitations. It must be prepared for the possibility of legal proceedings on behalf of the organization or of an individual teacher.

During negotiation the board may raise legal arguments for which convincing rebuttal is needed. Many negotiation proposals require legal review to ensure accuracy. Negotiated agreements ought to be reviewed before they are submitted to the membership for ratification. A competent attorney can provide invaluable assistance in preparing and presenting the association's position during negotiation, as well as during impasse proceedings if such should develop.

Many attorneys who are competent in various fields do not necessarily have the training or experience to provide the kind of help needed in teacher-school board relations. The local association should seek the assistance of experienced field representatives from the state and national associations in choosing an attorney.

Laws regarding employer-employee relations in public education are rapidly growing and changing. To avoid unnecessary expense, the local association should insist that its counsel utilize the clearinghouse services of the state and national associations. Their network of experienced attorneys can provide immediate support and assistance.

CHAPTER FOUR

Supporting Activities

The effectiveness of negotiators depends largely on the quality of their supporting committees. Persuasive argument requires the collection and organization of useful data. Effective decision making requires an awareness of circumstances and a sensitivity to the feelings of association members. In filling these needs, association committees must be productive, competent, and prompt.

THE COMMITTEES

The purpose of supporting committees is twofold. First, the committees must develop broad position statements which serve as guides for the negotiating team. Second, the committees must develop data that the negotiators will use as they press the association's demands.

Both of these activities should encompass every area of interest subject to negotiation. General categories must be salaries and fringe benefits, working conditions and employment practices, professional standards and development, instructional policies, equal educational opportunity, and association rights and security.

The local association probably will have an existing committee that can fill one or more of the negotiators' needs. For example, there is likely to be a salary committee which can conduct studies of salaries and fringe benefits. There is probably a TEPS committee which can work in the area of employment standards and professional development.

For other tasks, new ad hoc committees may have to be set up.

In either case, the president must appoint the committee chairmen in the same manner that he appointed the negotiating team. Although participation in committee work should require little more than an expression of interest, it is advisable for the president and the committee chairmen to solicit participation by individuals who are particularly well qualified. It may be necessary for the president to encourage

certain members to work on less popular committees. Each committee must receive specific and clear instructions from the president.

The president should work closely with the negotiating team in developing this charge. A good committee charge will include (a) a definition of the committee's responsibility, (b) a statement of the deadlines which the committee must meet, (c) a description of the form to be followed in reporting the committee's work, (d) a statement of the limitations under which the committee is to work, and (e) the intended use of the results of its deliberations.

Each committee must clearly understand that the negotiating team has the responsibility to formulate the final proposals and to negotiate the best possible agreement. The team must bear full responsibility for the negotiation strategy, and for the final design of a comprehensive proposal. No committee of the association, be it the salary committee, the TEPS committee, or any other, has the right to lay down unalterable restrictions or guidelines within which the negotiating team must work.

THE TASKS

The first phase of each committee operation should be to identify problems. The hopes and aspirations of teachers and the frustrations and aggravations which they experience must be considered, articulated, and stated in written form. The focus is on problems—teachers' problems.

Intensive and broad communication with the membership is essential to determine what concerns teachers have.

Once it has clearly defined the desires and problems of teachers, a committee must move to phase two, which is a searching assessment of the current practices in the local school district. It must examine the current contracts, existing board policies, administrative rules and regulations, and traditional administrative practices which are not written. Contract provisions, policies, or administrative regulations which have proved adequate should be preserved in a new negotiated agreement. In other cases, the solution of problems will require that the association propose and negotiate an amended or new policy. Finally, there will be policies and practices which are completely unsatisfactory, and the association must negotiate them out of existence.

Grievances that have been filed formally or informally during the past year should be analyzed thoroughly since a grievance frequently is filed because of inability to interpret a section of an existing policy. A study of the grievances often will uncover faulty wording or persistent

misunderstandings. The forthcoming negotiation should include an effort to clarify these provisions.

This analysis of existing policies and regulations is extremely important, and the determination of the need for new policies is equally important. (Teachers are more often the victims of arbitrary action than they are the victims of the enforcement of unfair policy.)

Current contracts negotiated by other local associations are helpful. NEA's Research Division maintains a catalog of current contract provisions. Many new ideas and methods for doing things are negotiated every year. Each association can benefit by exploring some of these and perhaps incorporating them into its proposed agreement.

Such a review can also give the team an argument to use in advancing a provision included in a contract negotiated elsewhere. It is helpful to be able to demonstrate that the provision is in effect and working well in another district.

This preliminary preparation of a negotiating package should involve a significant portion of the membership. It is important that every teacher have an opportunity to participate and to voice his personal feelings. The committees thus need to coordinate their activities so as to provide these opportunities freely. Working together, committees should use questionnaires which elicit desires and complaints from the members, building meetings which provide for oral expression, general meetings to report on the association's progress, and committee hearings in which teachers can respond directly to the committee's work. The ideas, opinions, issues, and information which these devices generate are extremely important and should be reflected in the products of the committees. The twin goals of each supporting committee—producing position statements and assembling data—must always be kept in mind while the committee works. They are vital to the committee's report.

The president, the executive committee, or a coordinating committee must make sure that each report is made in a usable form and that it meets established deadlines.

CHAPTER FIVE

Preparing the Proposal

With preliminary work complete or well under way, the negotiating team can begin to prepare the negotiation proposal. This preparation should be guided by the understanding that negotiation is an orderly process for resolving different points of view, and that the association is responsible for representing only the viewpoint of the professional employee.

CONTENT

The proposal should be so written that if the board accepted it in its entirety, the teachers' desires would be fulfilled and their frustrations terminated. Certain items obviously will be compromised or deleted during the course of negotiation. However, strong argument might establish that they are "musts" for future negotiation. So, the association should propose everything that the teachers wish to achieve and for which legitimate argument can be provided.

A great deal of work will have been done in preparing to write the proposal. Various committees or individuals will have examined current practices, policies, regulations, and contracts; analyzed teacher contracts from other districts; solicited ideas from teachers; received recommendations from the state and national education associations; assembled various data on employment practices, working conditions, economic trends, social problems, school finance, and so forth; and adopted policies and goals. Members of the negotiating team will have been directly involved in these activities.

These items are the information from which the proposal will grow. This information must be clearly understood if it is to be put to use effectively.

GUIDELINES

A few principles should guide the team in its work:

1. *A proposal, if adopted, must truly solve the problems which have generated it.* Writers must focus on the problems, con-

struct desired solutions, and formulate contract language or policy statements which will guarantee the desired result.

Perhaps the most common error in writing a proposal is copying of language from an agreement negotiated elsewhere. That language was designed to solve a slightly different problem. Further, the language in a negotiated agreement is frequently the language of compromise. For example, some contracts include such phrases as "every reasonable effort will be made," "if feasible," "when possible," or "within the limits of available funds." Such language allows the board of education a large measure of unilateral discretion in implementing change and, therefore, is nearly always inappropriate in a proposal.

The proposal must use straightforward language of commitment such as "the board shall," "the board shall not," "the administration will," "the teachers shall be provided," and "the teachers shall." When negotiation begins, compromise may be necessary but its character should not be presumed in advance.

2. *The proposal must be worded so that it communicates the same thoughts to all readers.* A well written contract or policy will greatly reduce the number of disputes which may arise when it is implemented.

   Clarity is a "must." Simplicity is a virtue. More grievances arise from differences over the interpretation of unclear provisions of a contract than over blatant violations of its clear provisions. Undefined terms and vague references should be clarified or restated.

3. *The proposal must be legally permissible.* A given practice might be required by law, permissible under law, or prohibited by law. The association ought not to propose a practice prohibited by law, but should exercise caution in concluding that a desirable practice is prohibited. (Many school boards have made this charge indiscriminately.) The proposal must also reflect an ethical and responsible position by the association.
4. *The association's proposal must be internally consistent.* A comprehensive agreement covering many independent school practices must not be contradictory. Several persons should review the total proposal at least once with this test in mind.
5. *The proposal must be so structured that reasonable compromise does not endanger the association.* In resolving different points of view, it may be possible for one party to persuade the other that a change is desirable for its own sake. There

will be many other occasions when compromise becomes possible as the parties work toward a middle ground.

On still other occasions, the parties will exchange commitments on relatively independent issues, such as "I will grant your position on A provided you grant my position on B." The association's proposal should be drawn so that each item can stand on its own merit.

The proposal should include three categories of policies:

A. Items which must be secured
B. "Soft" items which are desirable and which will be argued for, but which can be compromised in the process of give-and-take
C. Introductory items.

Introductory items are generally significant and highly desirable. However, at this point in negotiation, the association probably would regard total implementation as infeasible. The items should be introduced, therefore, to open the door. While the association may hope to achieve a part of each, the primary purpose would be to establish their validity and desirability, to establish teachers' interest in their achievement, and to reach agreement on the principles involved.

(Another useful technique in preparing for the give-and-take process is the simple overstatement of the association's minimum objectives. Health and accident insurance provides an example. If the association's objective is to secure fully paid premiums for the individual employee, the negotiating team might strengthen its negotiating position by proposing fully paid premiums for the employee and his dependents. Obviously, this must not be overdone. A sequence of ludicrous proposals undermines credibility.)

The tactical considerations which are built into the negotiating proposals must be kept in strict confidence. Otherwise the association's opportunity to succeed will be destroyed.

6. *The proposal must not embody a potential reduction in benefits to teachers by implication, by omission, or by direct statement.* Negotiators must be careful to propose nothing which requires or permits the change or termination of a current desirable practice.

   It is advisable to include in the proposal a statement that the agreement shall not be interpreted so as to deprive teachers of benefits or professional advantages heretofore enjoyed unless the agreement specifically states otherwise. For example, in

many school districts some teachers enjoy a full hour of duty free time for lunch while others do not. In such circumstances, to propose or agree to an unqualified 30-minute duty-free lunch period could be to the disadvantage of some teachers.

7. *Proposals should be worded so as to avoid any hostile or suspicious reaction by the other team.* There are usually many ways to state a point. Words must be selected carefully to convey an idea without offense.
   Language should be candid and forthright. No attempt should be made to camouflage the true objective. Anxieties and suspicions are frequently the result of incomplete understanding. Familiarity should also be considered. It is helpful to build on the status quo. In a district with written personnel policies, present language might well be used. Some policies may require little or no change. Such items should be placed at the beginning of the proposal to indicate a desire to build rather than to destroy.
8. *If possible, the proposal should be worded so as to stimulate a predictable and answerable response.* This is an obvious tactical advantage, but it is difficult to achieve. Ability to do this depends on knowledge of the board's negotiators. Their response often will stem from their convictions and prejudices and the special interests which they strive to protect. Notes and records from previous negotiation or other dealings with the board and the administration are valuable resources for the proper wording of the proposal.

These eight principles will assist association negotiators in reducing their proposals to the most useful written form. They should not be interpreted in such a way as to lead negotiators into forsaking any of their objectives.

THE DOCUMENT

The written proposal should be assembled with care. It should be typed with double or triple spacing so that there will be ample room to record notes and to modify the wording. Numbering the lines on each page will facilitate reference to specific sentences or words.

The document is easily handled if it is fastened by a paper clip or placed in a loose-leaf binder. This makes it possible to discard or replace pages as the need arises. As changes accumulate, it often becomes difficult to follow the original page in the proposal. In such

cases it is helpful to retype the entire page in the revised form, as the team understands it, and replace the original with this revision. Beginning each article in the typed proposal on a new page will make this last suggestion easy to follow.

CHAPTER SIX

Prenegotiation Planning

Before negotiation starts, the association team must make careful plans. Its first task is to review all stages of the preliminary preparation with the president or executive committee.

PRELIMINARY CHECKLIST

The following items should be considered:

1. The aspirations, needs, desires, and frustrations of teachers have been identified, described, and evaluated as to frequency, intensity, and relative priority.
2. Alternative solutions to problems have been formulated and evaluated as to adequacy, feasibility, and validity. Each solution has been assigned a priority. All that are totally inadequate have been rejected.
3. Specific objectives have been formulated and categorized into meaningful groups such as "must" items, "soft" items, and introductory items. Such information must be kept confidential.
4. Proposals have been written so as to define clearly all objectives.
5. The comprehensive proposal has been scrutinized and tested, and then rewritten to correct inadequacies.
6. Every proposal with economic implications has been exhaustively researched and, as nearly as possible, stated in dollar amounts. All such items have been tabulated to produce an estimated total cost of all proposals.
7. Proposals which embody personnel demands have been carefully considered so that there is real awareness of their impact on the current staff and the amount of additional staff that would be required. This must be considered a cost item at this point.

8. Each member of the negotiating team is intimately familiar with the comprehensive document and the significance of each item therein, as well as with all relevant data which have been collected.
9. Every association member, especially each building representative and each member of the executive committee, is fully aware of the procedure to be followed by the association throughout the negotiation process and of the responsibility and the authority that have been placed on certain individuals. He is also aware of the means to be used to keep him advised of the status of negotiation, and he is forewarned of the necessity for the negotiators to manage the flow of information.
10. The negotiators and leaders have measured and sampled the relative power—that is, the determination and solidarity of members—with which they speak.
11. A reliable corps of workers is identified and stands ready to accept special assignments (i.e., research, legwork, contacting members, writing) that the negotiating team may request.
12. The team has met several times and focused on the concepts in their proposals. There have been discussions regarding the significance of each line and clause.
13. The team has become aware of and discussed every detail of board policies which pertain to teachers. Similar studies have been made of teachers' lawful rights and responsibilities.
14. The comprehensive proposal has been checked by experienced field representatives of the state or national association and, if possible, by competent legal counsel.
15. Access routes to the resources of the state and national associations have been established and those resources are available for immediate use.

Having completed its review of preliminary preparation, the negotiating team can begin organizing for its work at the negotiating table.

METHOD OF OPERATION

Intrateam discipline is essential to successful negotiation. Development and maintenance of this discipline require that the team agree on the distribution of responsibility and authority among its members.

The function of the chief negotiator or spokesman must be clarified and acknowledged. *In brief, he is the only authoritative voice in dealings*

with the other team. This fact alone clarifies the function of the other team members. They are an extension of the spokesman's eyes, ears, hands, and brains. They complement his work, which is too much for one man.

The negotiation process is complex and delicate. If each team member should feel compelled to participate equally, the situation would become similar to that of a chess team playing a game with one member making the first move, the second making the second move, the third making the third move, and so on. No meaningful communication among them would be possible. Obviously, it would not work.

This is not to say that no member other than the chief negotiator should ever participate in the exchange. However, it must be clearly understood that the participation of every team member is subject to the lead and direction of the chief negotiator.

The participation or nonparticipation of members other than the spokesman should be planned to create an image. This image can never be described in words, but should be created by the team's behavior. The desired image is of a team which voluntarily and enthusiastically agrees with each point that its chairman makes, but which he does not dominate.

The spokesman must be authorized to make decisions relative to altering or maintaining direction, surrendering or maintaining the initiative, progressing or withdrawing on any given point, maintaining the floor or surrendering to a colleague, initiating new arguments or changing the subject, offering or receiving a counterproposal, and, most important, accepting or rejecting any point or position developed by board representatives.

In short, he must be authorized to control his team's participation in the negotiation process.

If a team member is dissatisfied with the spokesman's direction at the negotiation table or feels that a new argument or certain supporting data should be injected into the discussion, then it would be appropriate for him to communicate by note or, in some situations, by whispering to the spokesman.

Discretion must rule against overworking intrateam communication. The chief negotiator, along with other team members, must always be listening, analyzing, evaluating, and trying to interpret every nuance of each argument which passes to him across the table. He cannot afford to be distracted by a flurry of notes or by incessant whispering.

When a team member feels it is imperative for him to consult with the spokesman before negotiation proceeds further, he should signal for a caucus. The spokesman will announce the caucus to the other team,

and association representatives will adjourn to another room and decide on how to proceed.

Team members are equal partners in the caucus. Each must candidly express how he feels about what is transpiring, and, if at all possible, decisions should be made by consensus rather than by majority vote.

In addition to planning team behavior at the negotiation table, the team should observe key members of the other team almost full-time, maintain a record, and manage materials.

Observing members of the other team is a major responsibility. In every group there are individuals who have more influence on its decisions than others. The association's negotiators must identify such persons. Special efforts must be made to assess their feelings and positions on every point.

Each team member must share responsibility for recording the significant events during the negotiating process. Each should make notes on verbal and nonverbal responses which he believes forecast future responses.

Minutes recorded by someone other than a member of the teachers' team should not be accepted as official. One member of the association's team should have responsibility for maintaining an adequate record of the proceedings. Although a verbatim transcript is not necessary, the record should include the gist of every statement and every exchange. Careful notes should be taken on developing agreements.

One member of the team should have custody of a file, usually of the folding variety, with one article of the contract proposal in each compartment. Along with each item of the proposal, he should keep all of its rationale and supporting material for use by the spokesman when he needs them.

NEGOTIATION PRACTICE

The negotiation environment is more manageable if the team has anticipated and planned for every eventuality. In short, the team must not be caught off guard or thrown off balance. It should plan for each behavior or position that board negotiators might assume. The team can do this by assuming that it is representing the board and compiling a list of every argument that board negotiators might advance.

It is far better to assume the worst possible proposal and to be pleasantly surprised than to assume a favorable proposal and to be destroyed because of inadequate preparation.

Specific replies to each possible proposal must be planned. Each counterargument, complete with supporting data, should be carefully

defined. The basic purpose of this argument-counterargument analysis is to assist the team in planning its initial presentation of the proposal. If this analysis is done cogently, proposals can be presented so as to trigger the most manageable responses from the board of education team.

Simulated negotiation will also help in this task. This may be done by dividing the negotiating team into two units, one playing the role of the board's representatives, and the other, teachers' representatives. If necessary, another group, such as the executive committee, may assume the role of board representatives. Role play the negotiation over the toughest issue. If those who are acting the part of the board representatives do not overplay their role, this exercise can give keen insight into how well the team is prepared for negotiation.

CHAPTER SEVEN

Backup Research

Ideally, negotiation is an exercise in reason. This points up the urgency of the negotiator's need to know facts. Argument based upon fact is far more persuasive than unfounded speculation.

It is the school board's, or the community's, responsibility to produce the funds which are necessary to implement a reasonable salary schedule; in no case is it the duty of the public employee to subsidize the governmental agency for which he works. However, as a practical matter, the teachers' negotiating team should know as much or more than the representatives of the school board about the district's financial situation. All too often, negotiation has been concluded when the teachers have accepted the board's plea of abject poverty, only to see the board shortly thereafter discover a new source of funds for a project which it considers important.

NECESSARY INFORMATION

The NEA-ACT *Guidelines* series is very helpful in showing how to find and interpret information. The series provides an important fact-finding checklist of research activities for negotiation. Certainly, teacher-negotiators should have enough knowledge to be comfortable discussing the following:

1. *Teachers' salaries*
   In competing districts of the state and region
   In leading state and national districts
   In communities of similar characteristics and tax-paying ability
2. *Salary rates for other professional groups*
   National surveys such as the Endicott reports
   Regional surveys such as those of the Midwest College Placement Association
   Personnel policies of local business and industry

3. *Wage rates and fringe benefits for skilled and semiskilled labor*
   Reports from state associations and the National Education Association
   Reports from U.S. Departments of Labor and Commerce, especially the Bureau of Labor Statistics
   Reports from state agencies
4. *Living costs*
   Changes as shown by the Consumer Price Indexes
   Studies on purchasing power
   Family budgets for minimum essentials as proposed by the U.S. Bureau of Labor Statistics and the U.S. Department of Agriculture
5. *Trends in personnel management*
   Books on supervision, personnel management, and conditions of employment
   Journals and other periodicals on the same topics
6. *Teacher workload*
   Description of workweek of typical teacher
   The results of recent national, state, and local studies
   Average number of hours per week for the teaching staff in the local district
7. *Professional preparation of teachers*
   Percent holding degrees
   Percent holding advanced degrees
   Trends in credits earned beyond degrees
   Annual expenditures for professional improvements
   Effect of education on earnings
   Comparisons with the general population in the immediate area
8. *The experience of teachers and distribution on the current salary schedule*
9. *The number of teachers supplementing their teacher income*
10. *Budgetary policies and trends*
    Percentage of operating budget allocated for teachers' salaries and for instruction
    The annual relationship of actual expenditures to budgeted amounts
    Surpluses and sinking funds
    Debt service for school construction
    The use of capital outlay accounts
11. *School finance picture*
    Per pupil current expenditures

Ratio of assessed valuation to full valuation
Tax rates on an equalized basis—locally and in comparable districts
Growth in assessed valuations
School funds provided by the state and federal governments (amounts and percents)
Pending changes in the state school aid formula

12. *Measures of prosperity*
Local property values
Per capita and per household income
Per capita and per household retail sales
Industrial growth

13. *Teacher demand and recruitment*
Emergency certification
Current shortage in local terms
Needs resulting from expanding enrollments.

While this seems a formidable list, local negotiators should not be frightened. A large portion of these data is readily available. And school finance, incidentally, is not inscrutable. (See Appendix D for bibliography.)

The *Guidelines* series, along with other materials available from state associations and the National Education Association, will meet many of the negotiating team's needs. Experienced field representatives are also available for assistance. The greater the negotiators' knowledge in these areas, the greater are their opportunities to succeed. Gaps in knowledge will not render a team ineffective or helpless, but smart negotiators recognize that information is needed and are willing to search for it.

USE OF THE DATA

Although many people can be and should be involved in collecting, organizing, and interpreting the data, only the negotiating team can put it to use.

Each negotiator must study this material repeatedly. He must carefully select that which will be helpful in the team's argument. Further, he must be prepared to deal with that data which the board will use.

Generally, the association's team should be trying to prove that its proposal is (a) a legitimate expectation for teachers, (b) reasonable in terms of trends, (c) in the best interest of the school district, (d) equitable when applied to individuals, and (e) feasible for the community.

The employer has a responsibility for finances, wages, fringe benefits, conditions of employment, and educational programs which have economic implications and are reasonable, equitable, feasible, and, in most cases, necessary. Therefore, the association ought not to initiate discussions regarding the financial means of the school district. Neither should the association volunteer the knowledge which it has assembled on this matter.

The information should be gathered for other reasons. It is useful in working with association members and the total community. Further, teacher-negotiators must be prepared to deal with the matter of financial means if the opposing team raises the subject. But, most important, they must be prepared for the possibility of developing a case for a fact finder, a mediator, or an arbitrator.

When a third party is involved, it helps for the association to demonstrate a clear understanding of the relationship between its proposals and the financial condition of the school district. If the board of education has assumed a position woefully short of its ability to pay, the association must be prepared to demonstrate that fact.

It is legitimate to press a demand which creates financial strain.

It is also legitimate to compromise a demand because of a financial straitjacket. It is inexcusable, however, to do either of these in ignorance.

CHAPTER EIGHT

At the Negotiating Table

Recommendations on how the negotiating team should act at the negotiating table, what it should say, or how it should respond are general at best. Negotiating is more of an art than a science, and the circumstances which may develop are difficult to predict. However, on the assumption that situations are more often similar to one another than they are dissimilar, discussion of "do's" and "don't's" is pertinent.

THE RELATIONSHIP BETWEEN THE TEAMS

The board of education's negotiators may include any of the following individuals: board members, school administrators, a hired negotiator, or an attorney.

The association should insist that the makeup of its negotiating team is its exclusive concern and should be willing to grant that the makeup of the board's team is exclusively the board's business. The association should accept no limitation on whom it might appoint, and it should impose no limitation on whom the board might appoint.

While these rights are absolute, the association might wish to encourage the board to authorize a team to negotiate in the board's behalf. Many considerations make this desirable because—

1. Intensive negotiation requires frequent and long meetings.
2. Meaningful negotiation requires expertness regarding the day-to-day operation of the schools.
3. Agreement is more easily reached when negotiation is conducted by a party who has the obligation to reach an agreement which is subject to ratification by the board of education, rather that when it is conducted by the board itself or by a committee of the board.

The understanding that each team is authorized to speak for and reach agreement in behalf of its constituency, subject to final ratification, is inherent in the term "good-faith negotiation." There is absolutely no

point in either party's talking to a supposed negotiating team which has no authority to compromise or make agreement.

The duty of each party for maintaining the negotiating relationship is summarized in these concepts of good faith:

- Each party will deal with the chosen representative of the other.
- Each party will deal with the other honestly and in a bona fide effort to reach agreement.
- Each party will meet at reasonable times and places in order to facilitate negotiation.
- Each party will carry the necessary authority to make proposals and counterproposals, to compromise, and to make agreements subject to final ratification.

Beyond these general responsibilities, the school board which negotiates in good faith—

- Will allow the association reasonable access to teachers at their places of employment and reasonable opportunity to communicate with them.
- Will not undermine the association's negotiating team by dealing with individual employees or with another employee organization.
- Will not dissuade employees from participating in the negotiation or in the activities of the association.
- Will not try to discredit the association or to convince teachers that the employer is the best source of protection.
- Will not assume positions at the beginning which it describes as fair and firm, and therefore not subject to further negotiation.
- Will be willing to compromise or bargain.
- Will respond to the association's proposals and will provide supporting data and rationale for its own counterproposals.
- Will not arbitrarily or capriciously reverse positions formerly taken.

Although association negotiators must be sure that they negotiate in good faith, they ought not to be overly sensitive or defensive when a board representative charges bad faith. If the board has appointed inexperienced negotiators, they are likely to make this charge rather indiscriminately. If the board has employed experienced professional negotiators, they might well make this charge as a tactic designed to unnerve the association representatives.

Good-faith negotiation does not require that either party forsake its position or agree to a proposal based on any given pattern of bad-faith behavior by the other party. Behavior which is inconsistent with

good-faith standards should be carefully noted and documented. But since there is no point to careless charges of bad faith, the association should carefully weigh a decision before alleging bad faith. In most cases, it should consult with an experienced field representative from the state association or the National Education Association before doing so.

Generally, there is little to be gained by reprimanding or admonishing the board unless this relates in some way to the basic objective—a satisfactory agreement on substantive issues. To this end, when a valid charge of bad faith might win some advantage, teacher-negotiators ought to present a well documented charge forcefully.

In some states, appropriate charges may be brought before a legally designated state agency. The local association in cooperation with the state association should fully utilize such an agency. In states where there is no such agency, the problem is more delicate and the course of action must be judiciously evaluated.

GROUND RULES

The need for ground rules for the negotiating process varies with each local situation. A strong negotiation law reduces this need. On the other hand, the absence of legal requirements, or the presence of a school board or school administration that lacks integrity, increases the need for formalized rules. A procedural agreement by which negotiation is to be conducted is generally a recapitulation of these rules. The NEA-ACT *Guidelines* series includes a sample agreement. The local association should carefully heed the following points in considering ground rules:

1. Do establish the right of the association to select its own representatives and to change its representatives at will.
2. Do establish the obligation of the parties to deal with one another in a good-faith effort to secure agreement.
3. Do establish the obligation of the board of education to provide the association with the information which is necessary to develop proposals and negotiate in behalf of teachers.
4. Do establish the means by which each team formally communicates with the other.
5. Do establish that negotiation will take place in closed meetings.
6. Do establish how agreements will be handled—that they will be written, signed by the negotiators, submitted for ratification, and ultimately signed into agreement by the association and the board.

7. Do establish that either party may declare an impasse.
8. Do establish procedures for resolving an impasse.

On the other hand—

1. Do not agree on operating as a single committee of the whole
2. Do not agree that the superintendent is necessarily either a neutral party or the leader of the teachers by virtue of his position.
3. Do not agree to a transcript of official minutes.
4. Do not agree to absolute restrictions on your right to communicate with your members.
5. Do not agree to any limitations on association activities, private or public, in the case of an impasse.

PRESENTING THE PROPOSAL

Experienced negotiators disagree on the best method for the association to transmit its proposal to the board's team. Some believe that a preliminary submission along with a letter of transmittal setting forth a synopsis of the rationale for the proposal should be forwarded by mail or hand delivered to the chairman of the board's team prior to the initial meeting. Others feel that the proposal should be delivered by hand at the first session. This is a matter of preference and is not critical to long-term success.

In either case, the initial meeting should not consist of debate or argumentation. It is far more desirable for the association's team to explain the basic structure and content of its proposal. The team should explain to the board how the proposal evolved. It should emphasize the extent to which numerous teachers participated in the development and writing.

The team should make three fundamental points: first, that there is a strong teacher commitment to the proposals; second, that there is strong teacher support of the negotiating team and its efforts; and third, that throughout negotiation the parties will work from the proposed contract.

The negotiating team should make a strong effort not to be obvious in pursuing these objectives. Tacit consent should be accepted. If the other party should persist in trying to debate certain provisions of the document, or even to debate its structure, the association team should try, through nonhostile techniques, to avoid the argument.

If the board should merely accept the document and attempt to adjourn the meeting so that it might prepare a counterposition, the team should use the same nonaggressive techniques to continue the meeting and explain the association's position. If the board's representatives should persist in trying to end the meeting, the association's team might have to agree to adjourn. Before adjourning, though, the team should insist that a second meeting be scheduled and try to secure agreement on several noncontroversial items to be discussed at that meeting.

Many teachers become impatient with the ritual of negotiation. At the first session, for example, the board spokesman might make a statement about the fine relationship that has existed in the past, his expectation that this year's negotiation will result in an even finer relationship, and the financial limitations of the district. He might emphasize the unwillingness of the taxpayers to pay higher taxes.

The teachers' spokesman should answer by presenting the association's demands and asserting passionately (and probably truthfully) that the teachers' problems have been laid aside for too many years and must now be dealt with directly.

All of this will consume much time. A tone has been set, however, and that is important to the success of negotiation. A dialogue has begun without provoking disagreement. The parties have had the opportunity to become more comfortable with one another.

The teacher-negotiators must show by their manner that they are dealing with equals at the bargaining table, that there are no distinctions of rank.

THE NEGOTIATION DIALOGUE

The association should control the dialogue by initiating discussion on each item. This discussion should begin with a summary of the provision, an explanation of its significance, an assertion of the teachers' strong feelings for its need, and development of supporting facts and arguments.

This presentation must be designed to draw a response from the board. It should lead to an examination of the respective positions of the parties and an exchange of counterproposals. The board might answer in a number of ways. Each reply can be placed in one of the following categories:

1. Outright acceptance
2. Qualified acceptance

3. Opposition on principle (i.e., management prerogative, violation of sovereignty)
4. Opposition on the basis of feasibility (i.e., cost, administrative load)
5. Refusal to discuss the matter.

The association's team must assess the board's response carefully so that counterarguments can deal with the real objective.

If the board has accepted the proposal with qualifications, it would probably be better to rewrite the proposal so as to preserve the association's objective, but also to accommodate the board's objections rather than belabor the board with a harangue on the proposal's desirability.

A persistent pattern of outright rejection with no offer of counterproposals is not good-faith negotiation. The association team's best tactic might be an oblique assault. This is accomplished by ignoring the board's refusal to negotiate. In continuing to develop its case, the team should take care to emphasize that a problem has been identified, that negotiation is a problem-solving process, that an exchange of views on a significant problem is the best approach to its solution, that teachers know what should be done about the problem, that the proposal has merit, and that much information indicates it is feasible.

The objective of this oblique approach is to force the board to discuss the problem, to cause the board to state its specific objections, or to stimulate the board to offer a counterproposal (preferably in writing—but in many cases an oral statement will suffice). While this discussion is under way, the association team should seize upon every point of agreement. The chief negotiator should highlight every such point, and the recorder should maintain a careful record of what is said.

The advantage of the oblique approach is obvious. The alternative is to confront the board directly with its refusal to negotiate. This makes it very difficult for the board to alter its position. Any subsequent negotiation on the matter means it must capitulate. Since the objective of negotiation is agreement, early confrontations should be avoided.

But confrontation may be the only alternative should subtle approaches fail. In such a case, teacher-negotiators must not hesitate to expose the board's unwillingness to negotiate and must suggest indirectly the likelihood of dire results. The tactic should be coupled with a reaffirmation of the association's willingness to receive and conscientiously evaluate and discuss any board idea concerning the problem.

Oblique conversation is an important part of negotiation discourse. Proposals are stated forthrightly, but willingness to compromise or concede is dealt with indirectly.

Because a great deal of information is transmitted between the parties without direct statements, negotiators must use language which preserves options and flexibility.

The negotiating team should avoid absolute statements and should not exaggerate the board's use of them. Generally, it is well to consider a "no" as a "qualified no" and to consider a "final offer" as the "first final offer" or a "relatively final offer."

Tenacious but restrained persistence can be difficult for the board to cope with and thus can be very productive.

The association's team should return to the difficult items frequently. The board's refusal to compromise is probably temporary. A slight restatement of the demand, even if the objective is preserved intact, might very well trigger the compromise. Association negotiators must persist in their demands, watch for a signal that progress is possible, and then capitalize on that signal.

WINNING AGREEMENT

The three methods the association team must use for winning agreement are—

1. To persuade the board that an item should be accepted on its merits.
2. To exchange proposals and counterproposals to close a gap between the respective positions.
3. To exchange items on a *quid pro quo* basis.

The first is, of course, most desirable, and the negotiating team should be prepared to deal with each item in its proposal on this basis. However, experience indicates that regardless of how skillfully the total proposal is presented, the team will have to resort to the latter two methods.

* * * * *

Seeking agreement through an exchange of proposals and counterproposals is an effort to close, or reduce, the gap between positions by reaching a middle ground.

The association team should first rewrite the proposal so as to maintain all of its benefits while avoiding references to the terms to which the board objects. Such rewording frequently narrows the distance between positions. If the board's representatives respond in good faith to the new language, the gap probably can be eliminated through compromise or mutual concessions.

The team should not reduce the substance and scope of its demands through counteroffers until it believes that agreement can be reached by the counterproposals. This is particularly true when the association's counterproposals approach a rock-bottom position on "must" items.

The final counterproposal, which is a bare-bones statement of what is acceptable, should be offered only when it is fairly certain that the board will agree to it. It is far better to advance alternative agreements that will move the board to offer the association's rock-bottom position than for the association to propose that position.

* * * * *

The *quid pro quo* exchange can be very helpful. This is especially true if the board of education desires certain changes in existing conditions. For example, a board might be under extreme pressure from some groups in the community to lengthen the school year. The board probably will realize that increasing the school year from 180 days to 181 days, say, will not necessarily mean that each child will learn 1/180 more—but it feels the pressure anyway. The association might decide that it could accept a one-day extension of the year in return for several or all of the following concessions in addition to another full day's salary: (a) that each class be reduced in size by two students, (b) increased support for teachers in discipline procedures, (c) association involvement in curriculum development, and (d) increased insurance benefits paid by the board.

The opportunity to use the *quid pro quo* exchange is virtually unlimited; e.g., the board's proposed school calendar can be accepted provided a satisfactory salary is established, or the association can accept the board's proposed salary schedule if there is a significant reduction in teachers' assignments.

After agreement has been reached on most significant items, a slight modification of the *quid pro quo* exchange can frequently clinch total agreement. Thus if agreement has been reached on several important items, the association team might elect to make a proposal for total settlement although many other items have not been completed.

The probability of success with this technique is greatly improved when the stage has been properly set. The prelude should include a review of the many hours and the great effort that have gone into negotiation up to this point, a summary of the completed and the partial agreements, a reiteration of the staff's strong commitment to certain unresolved proposals, an estimate that an agreement without certain provisions could not be ratified, an assertion that the team could not be

very enthusiastic about an agreement that lacks certain essential provisions, and talk of the desire to reach total agreement.

After these points have been made, the settlement proposal could be brought forth in the following form:

> The association proposes that the board agree to its position on items A, B, C, and D. The association proposes specific compromise settlements on items E, F, and G. The association withdraws its demands on items W, X, Y, and Z.

The association team must be extremely judicious in handling the proposal for settlement. It should be practically certain that such a move will result in total agreement.

SEQUENCE OF NEGOTIATION

Most association negotiators believe that major economic items and other difficult provisions should be dealt with last. There are two fundamental reasons for this preference.

First, these items generally are most important to association members. If the board's negotiators can maneuver the association into an agreement on these items before dealing with minor items, they have greatly reduced the pressure to negotiate the lesser ones.

The second reason is more significant. As negotiation proceeds, the two teams develop a method of working together and dealing with each other that will allow much more stringent and effective negotiation to take place later than could have occurred in earlier sessions. The negotiators become more comfortable with one another, and the spirit of agreement becomes contagious.

The above sequence may have to be altered to meet unavoidable deadlines such as a cutoff date for offering contracts, but it is usually to everyone's advantage to begin negotiation with those matters on which agreement can be easily reached.

The development of a relationship that reduces tensions and builds understandings between the parties can be very helpful. As negotiation continues, some items will be accepted with relatively little trouble. Others will result in more difficult negotiation. Rather than disrupt negotiation over some relatively minor item or injure the relationship with an early heated disagreement, the problem should be temporarily set aside. The preferable time to resurrect the issue would be during a session where a number of agreements has been reached.

TENTATIVE AGREEMENTS

Both parties need to understand that agreement on any article or policy must be only tentative until agreement has been reached on *all* matters. Unless there is an understanding to the contrary, any item should be subject to further negotiation until the teams agree that they have finished their work. In the absence of total agreement, there is no final agreement on individual elements.

As tentative agreement is reached on each article, that article should be typed in the form agreed to and distributed to both teams. Each can check and verify whether this is its understanding of the agreement. Once verified, the article should be marked "tentative agreement," dated, and filed with other tentative agreements as they are reached. This reduces the probability of future misunderstandings. It also builds a typed version of the final total agreement.

CAUCUS AND ADJOURNMENT

The caucus is a temporary interruption of the negotiating process to allow either team to meet by itself. It is used to make team decisions, to assess what is happening, and to evaluate positions. Every association negotiator should know that his use of the caucus conveys certain messages to the board.

Excessive use of the caucus indicates uncertainty and lack of control by the chief negotiator. An extended caucus suggests that the team is having difficulty or doubt—or that the team is genuinely interested in the last counterproposal.

Conversely, a brief caucus could very well indicate that the team is firm and united in its resolve and has seen or heard nothing which would cause it to change position. Negotiators must take care in assessing the message delivered by their caucus practices and should use the caucus accordingly.

Decisions relative to the caucus or to the adjournment of a negotiating session should not be treated casually. Productive momentum should be preserved. The team should resist efforts to interrupt negotiation at a time when significant agreement seems imminent or when a succession of agreements is coming forth.

On the other hand, it might be desirable to interrupt negotiation if a cooling-off period might help or if passage of time might cause the board to rethink its position.

In summary, each party has the right to call for a caucus or to adjourn a session. Negotiators should make an effort to manage these interruptions to their best advantage.

DO NOT'S

What does a good negotiator do? He does the smart thing at the right time. Heeding the following caveats can reduce the probability of a mistake.

- Do not talk too much. It is easier to make a mistake while talking than while listening.
- Do not make hasty agreements. If necessary, use the caucus or adjournment to relieve the pressure.
- Do not reject proposals abruptly. Demonstrate interest and concern.
- Do not allow yourself to be personally insulted. The job is more important than your ego. Feigned injury or anger may help, but genuine injury or anger will not.
- Do not assume that negotiation involves reason alone. Other skills are often required.
- Do not respond emotionally. Emotion deters reason. Careless responses can spell disaster.
- Do not accept the assertion that the board of education or the school administration is more knowledgeable than the teachers about what is good for the schools or for children.
- Do not substitute wild guessing for factual information.
- Do not demonstrate any fear or foreboding. Project confidence.
- Do not lose sight of your specific objectives. Extraneous arguments are not helpful.
- Do not imply that some proposals are not important to teachers.
- Do not assume that the board will safeguard the interests of teachers.
- Do not forget that the agreements reached are subject to ratification by the teachers.
- Do not suggest by word or deed that agreement is more important to the association than to the board.
- Do not assume absolute positions.
- Do not forget that your objective is an acceptable agreement.
- Do not forget that your association members and their unity are the source of your power.

CHAPTER NINE

Impasse Resolution

If parties to negotiation cannot reach agreement, the deadlock must be recognized as an impasse situation. Very often the impasse can be resolved without disruptive activities. The most helpful processes are mediation and fact-finding.

MEDIATION

Under mediation, a disinterested third party assists the negotiating parties in arriving voluntarily at agreement. The mediator does not decide who is right or wrong, but seeks to reestablish productive negotiation.

In many states, negotiation laws provide for mediation through a state agency. In other states, a mediator may be chosen by whatever process the parties have agreed to use. The procedures of the American Arbitration Association (AAA) have proved to be satisfactory. The AAA panel of arbitrators comprises persons with skills and experience in resolving disputes. This is frequently a far more important qualification than one's knowledge of the public schools or of education. The experience of the NEA's Division of Field Services or the state association should be utilized when the local association is making a decision about a third-party intermediary.

The mediator attempts to stimulate counterproposals, compromises, and concessions by infusing new ideas, by suggesting new combinations of compromises and concessions, and by serving as a fresh vehicle for communication regarding extremely delicate points. Although a variety of techniques may be used, the mediator will probably deal separately with the two negotiating teams as agreement approaches realization.

He will look for signs of willingness to compromise, no matter how small, on any part of the issue. He may even suggest the basis for such compromise. He will try to ascertain how the association's team would respond if the board were willing to propose a new compromise. He is likely to be dealing with the board's team in the same way.

An experienced mediator will not violate a confidence, but will use data collected in sessions with one team to negotiate new compromises from the other.

When the mediator believes that he has arrived at either a partial or complete resolution of the differences between parties, he will try to persuade one of the teams to make a formal proposal to the other and will bring the two teams together again. If the teams have been honest with the mediator and the mediator has been honest with them, the proposal probably will result in agreement. At least it will stimulate further negotiation.

Mediation may continue for several days with only short intervals for sleep and for meals. A good mediator is skilled at keeping the parties together until they have adjusted their positions by further negotiation, or until he is convinced that agreement is impossible.

One point should be very clear: The association which hopes for successful mediation must be careful in choosing the time for calling in a mediator. Chances for success are much better if the mediator is involved when it first becomes apparent that further negotiation between the teams will not produce agreement. When the relationship between the teams has degenerated to a sustained and hostile debate and they have assumed final hard-line positions, mediation holds little promise for resolving the dispute.

FACT-FINDING OR ARBITRATION

There is much confusion about the differences between fact-finding or advisory arbitration and binding arbitration. There are also those who confuse arbitration of a negotiation dispute with arbitration of a grievance problem.

WHILE THE NEA UNEQUIVOCALLY ADVOCATES BINDING ARBITRATION OF GRIEVANCES, THAT IS NOT THE TOPIC OF THIS DISCUSSION. THE TOPIC AT HAND IS IMPASSE IN NEGOTIATION AND IS NOT RELEVANT TO ARBITRATION IN THE GRIEVANCE PROCEDURE.

Parties to negotiation seldom agree to submit disputes for a binding decision to an arbitrator. Fact-finding or advisory arbitration is more commonly preferred, and has proved to be helpful in resolving negotiation impasses.

In fact-finding, each team presents its case to a disinterested third party, or fact finder. This is done through a format established by the fact finder. Usually there is a series of meetings or hearings in which

each party presents the testimony and exhibits which it feels are necessary to convince the fact finder that its position is more reasonable and correct than that of the other party.

Once the fact finder has received all of the facts he believes pertinent, he closes the hearings and writes his report. This will include his recommended settlement and the reasoning which led to that recommendation.

The most common forms of fact-finding are the three-man panel and the one-man fact finder. When using the three-man panel, the association appoints one representative, the board of education appoints one representative, and the two representatives select a third person who will serve as panel chairman.

Experience with negotiation in public employment has lessened the attraction of the three-man panel. When compared with a one-man fact finder, the three-man panel has many disadvantages but few advantages. Therefore, the local association should press for only one fact finder.

While the work of the fact finder may be less demanding and less delicate than that of the mediator, his recommended settlement has enormous import to the local association. Extreme care must therefore be exercised in selecting this person. In the absence of an established state agency, the American Arbitration Association, again, is a good source of qualified fact finders.

If the local association is adequately prepared for negotiation, fact-finding hearings will not necessitate extensive additional preparation. However, at this point the local association should contact its state association and the National Education Association. They can greatly assist in selecting a fact finder and in organizing the presentation before the fact finder.

Because fact-finding is a quasi-judicial process, the correct presentation of evidence is of significant importance. The advice of one who is experienced in arbitration or in other presentations of evidence—such as a representative from the state or national association or a competent attorney—can greatly increase the chances of success.

The basis for preparation is advocacy. Inasmuch as an association team is the advocate of a point of view, the association's team must present all of the evidence which might serve to persuade a fact finder to rule in its favor.

The fact that the association is involved in arbitration means there is an adversary who opposes its effort. Caution must be taken not to introduce material which serves the adversary's interests. For example, if the issue in dispute is the salary schedule, the association should

introduce only those comparative studies which make any salary schedule short of its proposal appear to be inadequate. The basis for the study might be size, proximity, competition for teacher candidates, or tax base.

The important consideration is, Does this comparative study support the demand for higher salaries?

Finally, in preparing its case for advisory arbitration, the team must subtly and unobtrusively demonstrate the teachers' strong commitment to the association's position. While advisory arbitration is superficially a judicial process, considerations other than equity concern many arbitrators. They, like mediators, hope that an agreement will result from their efforts. Therefore, many are influenced by salability. That is, they will want to make recommendations that are salable or acceptable to the parties. If the board representatives take a hard line while association representatives indicate they will accept whatever is recommended, the association will be the loser.

CHAPTER TEN

Ratification

Ratification is the action by which either party accepts or rejects the agreement reached by the negotiation teams. This is an essential step in the negotiating process. The association team does not represent itself, but speaks for all of the teachers in the local district.

In order to fulfill the goal of negotiation there must be an opportunity for all employees to express their feelings about the adequacy of the negotiated agreement. If a negotiating team made decisions over which teachers had no control, there would be no significant change from the way boards of education have dealt with teachers in the past.

Negotiation by a representative team with final authority vested in the membership is proper and absolutely necessary.

There are many ways to accomplish ratification. They vary from secret-ballot voting to voice or standing vote in a general meeting. The procedure to be followed should be developed and adopted even before negotiation sessions begin. This is an important step in allowing teachers to place confidence in their negotiating team.

While a variety of procedures may be followed, experience has demonstrated that certain practices are desirable. A summary of the basic elements follows:

1. *Ratification should be postponed until negotiation has been completed and the final language of the agreement has been agreed to and approved by the members of both teams, even though the document may not be printed in its final form.* It is very embarrassing to consummate ratification, and then find that there continues to be a difference of opinion over how the agreement was really worded.
2. *Ratification should be conducted among the members of the association only.* Once an organization has been designated as the exclusive representative of all the employees of a unit, representation and negotiation become the concern solely of that organization.

3. *A ratification vote should not take place until the voters have been fully educated regarding the content of the settlement.* Voting based upon an incomplete or erroneous understanding can be disastrous.
4. *Ratification should be preceded by a clear recommendation by the negotiating team.*
5. *A ratification vote taken in a general meeting promotes uniform understanding.* Each teacher receives the same answers directly from his negotiating team.
6. *At the meeting and prior to voting, each member should receive a written description of the agreement.* If the full text of the agreement is not available, a summary statement should be prepared.
7. *A vote on ratification must be on the entire agreement as presented.* No deletions or amendments can be made, because both parties are voting on the same total package.

In summary, the ratification process must be fair, open, and candid, with each member having the full right to participate in the preliminary explanation and discussion as well as in subsequent voting.

APPENDIX A

NEA CONTINUING RESOLUTION ON PROFESSIONAL NEGOTIATION

C-33. Professional Negotiation and Grievance Procedures

The National Education Association believes that local associations and school boards must negotiate written master contracts. Such contracts shall result from negotiation in good faith between associations and school boards, through representatives of their choosing, to establish, maintain, protect, and improve terms and conditions for professional service and other matters of mutual concern, including a provision for financial responsibility.

The Association encourages local affiliates to see that teachers are guaranteed a voice in the establishment of instructional policies. Procedures for the resolution of impasse must be included. Grievance procedures shall be provided in the master contract with definite steps to appeal the application or interpretation of school board policies and agreements. Binding arbitration shall be a part of the grievance procedure.

Those representing local affiliates in the negotiation process shall be granted released time without loss of pay.

Faculty and building level administrators, in order to preserve professional relationships within school staffs, should not be negotiators for school boards. The Association recommends establishment of personnel offices at the central administrative levels to represent school boards in negotiation.

The Association urges the extension of the rights of professional negotiation to the faculties of institutions of higher education.

The Association urges its members and affiliates to seek state legislation that clearly and firmly mandates the adoption of professional negotiation agreements.

The Board of Directors shall establish a Professional Negotiation Committee immediately to facilitate the achievement of professional negotiation agreements and to maintain an efficient communication system on professional negotiation between the Association and its affiliates.

The rights and privileges of all teachers should always be respected regardless of what organization has sole negotiation rights.

APPENDIX B

THE 1969 RESOLUTION OF THE ASSOCIATION OF CLASSROOM TEACHERS

69-70. Professional Negotiation

ACT believes that local professional associations have the professional right and should have the mandatory legal right, through appropriate professional channels and democratically selected representatives including classroom teachers, to negotiate with boards of education in the formulation of policies affecting professional services of all teachers and all conditions of work.

ACT therefore urges local associations to seek the cooperative action of classroom teachers, administrators, and local boards of education to achieve the establishment of negotiation agreements that will (a) include an orderly method of involving local classroom teacher representatives, administrators, and school board members in the cooperative development of mutually satisfactory policies; (b) define the obligations of the superintendent in his roles as member of the profession and legal executive officer of the school board; and (c) authorize a means of appeal through designated educational channels or third parties when agreements cannot be reached. ACT further urges local associations to join with state associations in seeking state legislation to establish professional negotiation as a legal and mandatory right of local professional associations.

APPENDIX C

CONTENT OF A MASTER CONTRACT

This appendix is a list of appropriate articles for comprehensive agreement. The subjects are taken from contracts currently in effect and reported to NEA as of June 1969. Future experience will bring negotiation on still more topics. Local associations should negotiate in the areas below, but should not limit themselves to this list. They should, for instance, insist that the agreement include a strong statement on nondiscrimination by age, sex, race, religion, and other factors in consideration for hiring, placement, promotion, transfers, and so on.

Article I	Definitions
Article II	General Provisions
Article III	Recognition
Article IV	Negotiation Procedure
Article V	Grievance Procedure
Article VI	Rights of Teachers
Article VII	Rights of the Exclusive Representative
Article VIII	Teaching Hours and Teacher Load
Article IX	Class Size
Article X	Teacher Assignments and Relief from Nonteaching Duties
Article XI	Vacancies and Promotions
Article XII	Transfers (Voluntary and Involuntary)
Article XIII	Leaves of Absence
Article XIV	Group Insurance and Hospitalization
Article XV	In-Service Education
Article XVI	Protection for Teachers
Article XVII	Academic Freedom
Article XVIII	Employment Standards
Article XIX	Curriculum Improvements
Article XX	Teaching Conditions
Article XXI	Student Discipline
Article XXII	Teacher Evaluation and Teacher Files
Article XXIII	Student Teachers
Article XXIV	Paraprofessionals, Teacher Aides, Teaching Specialists
Article XXV	Salary Policies and Payroll Procedures (Schedules in Appendix)
Article XXVI	Summer and Evening Schools

Article XXVII	School Calendar
Article XXVIII	Equal Educational Opportunity
Article XXIX	Payroll Deductions
Article XXX	Duration and Amendment

The appendix of the contract might include the following items:

- Salary schedules for classroom teachers
- Schedule of extra compensations
- Schedules for special assignments
- Salaries of teachers in adult education and in summer schools.

APPENDIX D

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